

Samuel Buckley, Appellant.

George Littlebury, Respondent.

The Respondents C A S E.

I Saac Littlebury, late of London, Gent. Deceased, the Respondents Brother, having a considerable Personal Estate, and being little or nothing Indebted, and having neither Brother or Sister, except the Respondent, who hath several Children; the Sixth of December, 1709. makes his Last Will and Testament in Writing, and thereby gives to the Respondent and his Wife Ten Pounds apiece, and to their Four Children (the Eldest of which is not above Fifteen Years of Age) Fifty Pounds a-piece, to be paid them at their Ages of Twenty Years, and to Sarah Lynch the Testators Housekeeper Six Hundred Pounds, and the Furniture of his House, with his Watch, Ready Mony, and as full Possession of every thing therein, as he had at that Time, (Books excepted.)

And gave the Appellant by the said Will, all Monies as were or should be Owing to the Testator from the Appellant, by Bond or Note, together with whatsoever might be Due to the Testator from Paris, Rome or Lisbon, for Goods formerly sent thither, and made the said Appellant sole Executor.

That the said Testator had considerable Effects and Sums due to him at Rome, Paris and Lisbon, which are by his Will given to the Appellant.

And the Appellant owns he Owed the Testator at his Decease, by Bonds and Note, 246 l. 15 s. 2 d. Principal Mony, besides considerable Arrears of Interest.

That there being so exprefs and great a Legacy given to the said Appellant, an Acquaintance only of the said Testators, and nothing of Kin to him, as 246 l. 15 s. 2 d. besides the Effects and Debts owing to the Testator at Rome, Paris and Lisbon, which to conceal the largeness of, the Appellant pretends he hath not Received. The Respondent was advised the Surplus of his said Brothers Estate, not being disposed of by his Will, belonged to him as his Brothers next of Kin.

And therefore in the Month of October, 1710. the Respondent Exhibited his English Bill into the Lord Mayor's Court of the City of London, against the said Appellant, for an Account of the Residue of his said Brothers Personal Estate, not disposed of by his said Will.

That the Appellant put in his Answer thereto, and the Respondent replying to his Answer, the said Cause came to be heard before Sir Peter King, the present Recorder, the 17th Day of April last.

And upon hearing of Council for the Appellant and Respondent,
Sir Peter King,

Decreed the Appellant to Account to the Respondent for the Residue of the Respondents said Brothers Estate, after Debts and Legacies given by the said Will.

From which Decree the Appellant hath Appealed to your Lordships, and the Respondent humbly hopes the same Decree shall be affirmed.

First, For that the said Residue of the said Respondents said Brothers Estate is not disposed of to any Person by the said Will.

Secondly, For that the Appellant who is Executor, and no ways of Kin to the Testator, hath a considerable certain Legacy, besides what is very Valuable, still standing out, expressly given to him by the said Will.

That the Respondent is Brother, and next of Kin to the Testator, and by the Presidents of this Honourable House, and of the Courts of Equity below, is intituled to the Residue of the Personal Estate, where the Testator gives the Executor a Legacy, and makes no disposition of the Residue of his Personal Estate.

And therefore the Respondent humbly prays, the said Decree in the Lord Mayor's Court may be Affirmed by your Lordships, and the present Appeal dismiss'd, with Costs.

G. Duincefort